



USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/12/2021

JAMES E. JOHNSON
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

DAVID S. THAYER
Assistant Corporation Counsel
t: (212) 356-2649
f: (212) 356-1148
e: dthayer@law.nyc.gov

February 11, 2021

Via ECF

The Honorable Analisa Torres
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Mizuta, et al. v. Carranza, et al., Case No. 20 CV 6014 (AT)

Dear Judge Torres:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, James E. Johnson, attorney for the Defendants New York City Department of Education and its Chancellor Richard Carranza (collectively, "DOE") in the above-referenced action. I write, with the consent of Plaintiffs' counsel and pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, to respectfully request leave to file under seal the certified administrative record underlying this action, brought pursuant to the Individuals with Disabilities Education Act ("IDEA").

The certified administrative record in this action is replete with confidential information, including the name, date of birth, and other pedigree information of the minor student on whose behalf this action is brought. This information should not be disclosed publicly. Fed. R. Civ. P. 5.2(a).

Additionally, the record contains "personally identifiable information" describing the medical history and the disabilities of the student, in addition to containing educational records relating to the student's educational progress and history. These materials are protected by regulations promulgated pursuant to the IDEA and to the Family Educational Rights and Privacy Act ("FERPA") because they are "linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." 34 C.F.R. § 99.3

(defining personally identifiable information under FERPA); see also id. § 300.32 (including a “list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty” as personally identifiable information under IDEA). Additionally, because the underlying administrative proceeding is presumptively closed to the public, see 34 C.F.R. § 300.512(c)(2), materials recounting these proceedings should themselves be deemed confidential. Consistent with the practice in IDEA actions before this Court, e.g., Memo Endorsement, Mizuta v. N.Y.C. Dep’t of Educ., No. 19 CV 537 (AJN) (S.D.N.Y. Sept. 17, 2020), ECF No. 84, DOE therefore respectfully requests, with consent of Plaintiffs’ counsel, leave to file under seal the certified administrative record in this action.

Lastly, the deadline for DOE to file this certified administrative record was yesterday, February 10, 2021. Due to the inaccessibility of the Court’s ECF system yesterday afternoon and evening, and due to connectivity issues that I have continued to experience today, I have unfortunately been unable to file the record until now, and I respectfully request that the Court deem the administrative record timely filed *nunc pro tunc*. I provided Plaintiffs’ counsel with a copy of the certified administrative record yesterday, mitigating any prejudice to Plaintiffs that might otherwise have occurred.

Thank you for your consideration of this application.

Respectfully yours,

/s/ David S. Thayer

David S. Thayer
Assistant Corporation Counsel

cc: ***Via ECF***
Peter G. Albert, Esq.
Brain Injury Rights Group, Ltd.
300 East 95th Street
Ste 130
New York, NY 10128
Counsel for Plaintiffs

GRANTED. The document at issue contains highly personal information.

The administrative record is timely filed *nunc pro tunc*.

SO ORDERED.

Dated: February 12, 2021
New York, New York



ANALISA TORRES
United States District Judge